

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS RODRIGUEZ and
TINA RODRIGUEZ,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

**PLAINTIFFS' RESPONSES
TO DEFENDANT'S
FIRST SET OF
INTERROGATORIES**

Civil No.: 17-CV-251

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the plaintiffs, THOMAS RODRIGUEZ and TINA RODRIGUEZ, in response to defendant, UNITED STATES OF AMERICA's, First Set of Interrogatories, hereby state, upon information and belief, the following:

GENERAL OBJECTIONS

A. Plaintiffs object to defendant's requests which fail to state a time period as being overly broad, unduly burdensome and oppressive.

B. Plaintiffs object to defendant's requests to the extent that they seek "all documents" regarding a stated subject upon the basis that such a request is over broad, unduly burdensome and oppressive.

C. Plaintiffs object to defendant's requests to the extent that they seek information that is not relevant to any material issue in a lawsuit and is not reasonably calculated to lead to the discovery of admissible evidence.

D. Plaintiffs object to defendant's requests to the extent that they call for identification or disclosure of information that was prepared in anticipation of litigation, constitutes attorney work product, contains privileged attorney-client communications, or is otherwise privileged. Any disclosure of such protected or privileged information is inadvertent and shall not constitute a waiver of any privileges or protections.

E. Plaintiffs object to defendant's requests to the extent that they assume disputed facts or legal conclusions in defining the information requested. Plaintiff(s) hereby denies any such disputed facts or legal conclusions to the extent assumed by each request. Any information provided by plaintiff(s) with respect to such a request is without prejudice to this objection.

F. Plaintiffs' responses and any identification or production of documents thereto, are not intended to waive or prejudice any objections she may assert now or in the future, including, without limitations, objections as to the admissibility at trial of any response or document, category of responses or documents.

G. Plaintiffs reserve the right to supplement these objections and responses to the requests.

Subject to the foregoing general objections which plaintiffs hereby incorporate into each of the following responses, plaintiffs respond to defendant's First Set of Interrogatories as follows:

INTERROGATORY NO. 1

State whether plaintiffs have ever been or are now plaintiffs, defendants or parties in any other civil action or criminal action. If so, state the dates and types of cases, the names of the other parties, the names of the attorneys for all parties and the outcome and/or status thereof.

ANSWER

Plaintiff objects to this request to the extent that it is overly broad and seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. However, without waiving the foregoing objection, plaintiff states that he was not involved in any civil actions relating to any personal injuries and has not been a party in any criminal action.

INTERROGATORY NO. 2

State whether plaintiff Thomas Rodriguez has ever been in any other automobile accidents other than the one that is the subject of this action. If so, state the date, location, the name of the other driver involved, a description of the accident and any injuries suffered.

ANSWER

Upon information and belief, plaintiff has been involved in minor property damage accidents; however, cannot recall any specific details.

INTERROGATORY NO. 3

State plaintiff Thomas Rodriguez's educational history including names and addresses of each school attended, years attended, grades completed and

years of study. Include in your response any vocational training which plaintiff may have received.

ANSWER

Plaintiff, THOMAS RODRIGUEZ, graduated from Niagara Falls High School in 1990. Thereafter, he completed one semester at Niagara County Community College in criminal justice, and graduated in approximately 2000 from the law enforcement academy held at Niagara County Community College.

INTERROGATORY NO. 4

State plaintiff Thomas Rodriguez's work history, including names and addresses of all employers, periods of unemployment and the reasons therefore, and periods of disability and the reasons therefor.

ANSWER

Plaintiff, THOMAS RODRIGUEZ, has worked as a Police Officer with the City of Niagara Falls, New York since March 1, 2000. He became a Detective with the City of Niagara Falls on April 7, 2008 and has been employed thereafter until his accident on February 25, 2016. Upon information and belief, plaintiff was unable to work for approximately two weeks following his right shoulder surgery due to an injury which incurred on January 28, 2011; and has been unable to work since the accident referenced herein on February 25, 2016.

INTERROGATORY NO. 5

State the names and addresses of each and every physician, health care provider, counselor, psychologist, psychiatrist, dentist, Ph.D., therapist,

chiropractor, osteopath and/or any other type of dental, medical or mental or physical health care providers who treated, counseled, advised, examined or in any way attended to plaintiff Thomas Rodriguez prior to the date of the incident alleged in the Complaint.

ANSWER

Upon information and belief, plaintiff has not suffered from any pre-existing or subsequent injuries pertaining to those parts of the body injured herein. Plaintiff objects to the information requested in relation to other areas of the body as it seeks information which is irrelevant, lies beyond the scope of discovery and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 6

Specify all diseases, serious illnesses, afflictions or injuries with which plaintiff Thomas Rodriguez had been diagnosed prior to the date of the incident alleged in the Complaint.

ANSWER

Upon information and belief, plaintiff has not suffered from any pre-existing or subsequent injuries pertaining to those parts of the body injured herein. Plaintiff objects to the information requested in relation to other areas of the body as it seeks information which is irrelevant, lies beyond the scope of discovery and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 7

State the names and addresses of each and every physician, health care provider, counselor, psychologist, psychiatrist, dentist, Ph.D., therapist, chiropractor, osteopath and/or any other type of dental, medical, or mental or physical health care providers who treated, counseled, advised, examined or in any way attended to plaintiff Thomas Rodriguez for any or all of the injuries complained of in the Complaint.

ANSWER

Upon information and belief, as a result of the injuries sustained herein, the plaintiff was examined and/or treated by the following medical providers on or about the dates listed below:

- a. Niagara Falls Memorial Medical Center
621 Tenth Street
Niagara Falls, New York 14302
Date of Treatment: 2/25/16
- b. WNY Occupational Health Care
621 Tenth Street
Niagara Falls, New York 14302
Dates of Treatment: 2/25/16 through 2/29/16
- c. David Bagnall, M.D.
UBMD Orthopaedics & Sports Medicine
4949 Harlem Road
Amherst, New York 14226
Date of Treatment: 3/2/16
- d. Ronald Clarke, D.O.
6950 Williams Road
Niagara Falls, New York 14304
Dates of Treatment: 3/8/16 through present

- e. Douglas Monteleone, D.C.
Advanced Chiropractic
820 Main Street
Niagara Falls, New York 14304
Dates of Treatment: 3/8/16 through 10/13/16
- f. William Wind, M.D.
UBMD Orthopaedics & Sports Medicine
4949 Harlem Road
Amherst, New York 14226
Dates of Treatment: 3/28/16 through present, including left shoulder surgery
- g. ProScan Imaging Buffalo
5214 Main Street
Amherst, New York 14221
Dates of Treatment: 4/6/16 (cervical & lumbar MRIs) and 2/16/17 (lumbar MRI)
- h. Advanced Care Physical Therapy
924 Main Street
Niagara Falls, New York 14301
Dates of Treatment: 4/6/16 through 6/2/16
- i. Franco Vigna, M.D.
Spine Surgery of Buffalo Niagara
6941 Williams Road
Niagara Falls, New York 14304
Dates of Treatment: 4/27/16 through present, including lumbar surgery
- j. Michael Stoffman, M.D.
UB Neurosurgery
5959 Big Tree Road, Suite 103
Orchard Park, New York 14127
Date of Treatment: 5/11/16
- k. University Orthopaedics MRI Center
4949 Harlem Road
Amherst, New York 14226
Date of Treatment: 5/12/16 (shoulder MR arthrogram)

- l. Michael Geraci, Jr., M.D.
52 South Union Road
Williamsville, New York 14221
Dates of Treatment: 6/2/16 through 9/15/16, including
lumbar injections
- m. Dubois Physical Therapy
2111 Sawyer Drive
Niagara Falls, New York 14304
Dates of Treatment: 6/13/16 through 1/17/17
- n. Ambulatory Surgery Center of WNY
3112 Sheridan Drive
Amherst, New York 14226
Dates of Treatment: 7/18/16 and 9/15/16 (lumbar
injections)
- o. Millard Fillmore Surgery Center
215 Klein Road
Williamsville, New York 14221
Date of Treatment: 8/11/16 (left shoulder surgery)
- p. Kenmore Mercy Hospital
2950 Elmwood Avenue
Kenmore, New York 14217
Dates of Treatment: 6/12/17 through 6/15/17 (lumbar
surgery)
- q. Access Physical Therapy
2316 Pine Avenue
Niagara Falls, New York 14301
Dates of Treatment: To be supplied
- r. Buffalo MRI
4925 Main Street
Amherst, New York 14226
Date of Treatment: To be supplied (left shoulder MRI)

INTERROGATORY NO. 8

Does plaintiff Thomas Rodriguez suffer from any diseases, serious illnesses or afflictions or injuries requiring medical attention since the date of the accident

which were not caused by the alleged negligence of the defendant? If so, give details including dates, treating physician(s), what treatment consisted of, present condition, and prognosis in relation to each such illness, affliction or injury.

ANSWER

Upon information and belief, plaintiff has not suffered from any pre-existing or subsequent injuries pertaining to those parts of the body injured herein. Plaintiff objects to the information requested in relation to other areas of the body as it seeks information which is irrelevant, lies beyond the scope of discovery and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 9

State the names of any and all prescription drugs or medications (other than antibiotics or over-the-counter drugs) which plaintiff has taken or which have been prescribed for the plaintiff Thomas Rodriguez since the date of the accident. State the names and addresses of the pharmacies which such prescription medications were acquired.

ANSWER

Upon information and belief, plaintiff has been prescribed at varying times Ibuprofen, Lortab, Medrol Pak, Cyclobenzaprine, Hydrocodone, Naproxen and Tramadol. Plaintiff obtained his prescriptions from Rite Aid Pharmacy, 8015 Niagara Falls Boulevard, Niagara Falls, New York 14304.

INTERROGATORY NO. 10

State the names of any and all prescription drugs or medications (other than antibiotics or over-the-counter drugs) which plaintiff Thomas Rodriguez had taken or which had been prescribed for plaintiff in the five years prior to the date of the accident. State the names and addresses of the pharmacies where the prescription medications were acquired.

ANSWER

Plaintiff objects to this request on the basis that it is beyond the scope of discovery and seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Therefore, plaintiff respectfully declines to respond to same.

INTERROGATORY NO. 11

Describe the exact character and duration of all injuries purportedly suffered by plaintiff Thomas Rodriguez as a result of the alleged negligence of the defendant.

ANSWER

Upon information and belief, as a result of the alleged incident, the plaintiff, THOMAS RODRIGUEZ, sustained the following known injuries, all of which are claimed to be permanent unless otherwise stated: head pain; neck pain and stiffness; back pain; cervical sprain/strain; lumbar sprain/strain; decreased range of motion of lumbar and cervical spine; muscle spasms; edema; left buttock pain; increased pain with activity; low back pain radiating into left

lower extremity; disc herniations at C5-6 and C6-7 with impingement; disc bulge at C4-5; disc herniations at L4-5 and L5-S1 with impingement; disc bulge at L2-3; whiplash; sleep disturbances; paresthesia and weakness of left upper extremity; decreased range of motion of left shoulder; left shoulder tendinitis with partial rotator cuff tear, labral tear and impingement; left shoulder bursitis; morbidity, pain and suffering associated with left shoulder arthroscopy with rotator cuff repair, subacromial decompression with acromioplasty and subpectoral biceps tenodesis performed on August 11, 2016; numbness and temperature changes of left foot; gait disturbances; morbidity, pain and suffering associated with left laminotomy and discectomy at L4-5 and L5-S1 with localization of level under fluoroscopy and utilization of neural monitoring performed on June 12, 2017; surgical scarring left shoulder and low back; possible additional disc herniations and/or bulges; altogether with injuries to the bones, muscles, tendons, ligaments, nerves, blood vessels and soft tissues in the injured areas, and accompanied by pain, discomfort, limitation of motion, emotional upset and shock to the nerves and nervous system; physical pain and suffering associated with the aforementioned injuries; emotional anguish and suffering associated with the aforementioned injuries; limited ability to perform normal daily functions; limitation in ability to engage in social activities; inability and limited ability to perform physical activities; inability and limited ability to perform household chores and maintenance; inability and limited ability to engage in life's enjoyments; and loss of employment and career due to

the aforementioned injuries. Further injuries may be identified within the medical records of the plaintiff that were either previously provided or obtained through the use of our client's authorizations.

In addition, as a result of his injuries, plaintiff, THOMAS RODRIGUEZ, has been forced to undergo various diagnostic studies and treatments, including, but not limited to, x-rays; MRIs; MR arthrogram; left shoulder injection; left S1 transforaminal epidural steroid injections; utilization of a Tens unit, shoulder immobilizer and back brace; and prescribed and over-the-counter medications for pain and inflammation. Plaintiff has also been involved in programs of physical therapy, as well as home exercise programs and chiropractic treatment.

Permanency is further manifested in that the plaintiff, THOMAS RODRIGUEZ, continues to suffer from chronic pain and swelling, surgical scarring to left shoulder and lumbar area, and limitations associated with the aforementioned injuries. In addition, the plaintiff may require future surgical intervention pertaining to his cervical spine, and will most likely develop arthritis at the injured sites in the future. The plaintiff is still under the care of his doctors. The total extent of permanency is not yet fully known at this time.

INTERROGATORY NO. 12

State the medical and hospital expenses incurred for plaintiff Thomas Rodriguez as a result of the alleged negligence by the defendant, including but not limited to the cost of the services of physicians, surgeons, nurses, hospitals,

therapy, home health care aides, medicines and manipulations. As to each incurred expense indicate who has paid such.

ANSWER

Upon information and belief, as a result of the alleged incident, the following items of special damages, known to date, have been incurred:

A. HOSPITALS:

Niagara Falls Memorial Medical Center	\$ 811.58
Ambulatory Surgery Center of WNY	\$ 1,636.06
Millard Fillmore Surgery Center	\$ 15,089.97
Kenmore Mercy Hospital	To be supplied

B. PHYSICIANS:

WNY Occupational Health Care	\$ 110.57
David Bagnall, M.D.	\$ 145.77
Ronald Clarke, D.O.	\$ 561.24
Douglas Monteleone, D.C.	\$ 1,479.51
William Wind, M.D.	\$ 10,045.19
Michael Stoffman, M.D.	\$ 181.97
Franco Vigna, M.D.	\$ 4,913.52
Michael Geraci, M.D.	\$ 410.14

C. OTHER:

ProScan Imaging	\$ 2,997.00
Advanced Care Physical Therapy	\$ 1,065.57
DuBois Physical Therapy	\$ 2,381.02
University Orthopaedics MRI Center	\$ 305.33
Prescriptions	To be supplied
Medical supplies	\$ 60.00

Medical expenses are approximate and continue to accrue. Upon information and belief, the majority of plaintiff's medical expenses have been paid by the workers' compensation carrier, whose lien as of March 3, 2017 is in

the amount of \$20,946.94 (medical expenses only since the employer has continued base wage payments).

INTERROGATORY NO. 13

If plaintiff Thomas Rodriguez contends that he was disabled from his usual work, livelihood and social and personal endeavors, hobbies and activities as a result of defendant's negligence, state what usual work, livelihood and social and personal endeavors, hobbies and activities he has been disabled from and the duration thereof.

ANSWER

Upon information and belief, at the time of the incident, the plaintiff, THOMAS RODRIGUEZ, was employed as a Police Detective with the City of Niagara Falls, Department of Police, located at 1925 Main Street, Niagara Falls, New York. As a result of the incident, the plaintiff could not engage in employment activities from the date of the injury, February 25, 2016 through the present time. At the time of the incident, the plaintiff was earning an estimated base pay in the amount of \$1,270.21 per week. Said figure does not include any wage increases, bonuses, overtime, court appearances or other benefits plaintiff would have received for said time period. In 2015 plaintiff earned approximately \$114,000.00. It is unknown at present the total amount of lost earnings since same continues to accrue.

Additionally, the plaintiff's future retirement benefits will be reduced as a result of his inability to work in his career.

Further, upon information and belief, due to his injuries, the plaintiff is no longer able to perform various physical activities that he typically did prior to the subject accident. In particular, the plaintiff cannot lift heavy objects, stand or sit for long periods of time, walk long distances, perform heavy household maintenance, engage in strenuous recreational activities, play golf, run or exercise, take family trips or vacations involving long car rides, attend concerts, or enjoy a full night's restful sleep. Plaintiff has difficulty walking on uneven ground and has not been able to utilize a cottage he owns in the southern tier. During the spring and summer months he would go to his cottage on the weekends and ride four-wheelers, operate a tractor, and was previously able to maintain and enjoy his property. Plaintiff has also had to stop coaching baseball for the two teams his children participate in. Plaintiffs reserve their right to supplement this response.

INTERROGATORY NO. 14

State whether the plaintiff Thomas Rodriguez has made a claim for any benefit under any medical pay coverage or policy of insurance, including but not limited to Social Security, Medicare, Medicaid, workers' compensation and/or health insurance benefits relating to the injuries arising out of the incident mentioned in the Complaint. If so, state the name of the insurance company or organization to which such claims was made, the date of the claim or application, the claim and policy numbers and the amount of any payments received, and the disposition of the claim.

ANSWER

Plaintiff's medical expenses are being paid by the workers' compensation carrier, PERMA, 9 Cornell Road, Latham, New York 12110, Claim No. 216-0239681, WCB No. G134 9077.

INTERROGATORY NO. 15

State the precise amount of damages sought by plaintiffs by reason of the allegations set forth in the Complaint. Explain what portion, if any, of such amount is related to:

- a. Loss of earnings;
- b. Pain and suffering;
- c. Mental anguish;
- d. Medical care;
- e. Any and all other elements of damage.

ANSWER

With respect to damages, please be advised that plaintiffs hereby demand the sum of \$3,000,000.00 on behalf of THOMAS RODRIGUEZ and \$1,000,000.00 on behalf of TINA RODRIGUEZ.

Plaintiff also refers defense counsel to Interrogatory Nos. 12 and 13, supra. In addition to the aforesaid items of special damages, the plaintiffs will seek to charge the defendant herein with an unliquidated sum for future medical expenses, his inability to lead a normal life, permanency, pain and suffering, future lost earnings, and for those damages as alleged in the Complaint.

Further, the plaintiff, TINA RODRIGUEZ, wife of the plaintiff, THOMAS RODRIGUEZ, will seek to charge the defendant herein with an unliquidated sum for the loss of services, society, consortium and companionship of her spouse.

Plaintiffs also purchased a new home in March 2017, and due to plaintiff's injuries and limitations, he has been unable to perform the construction duties he normally would have been able to do, and therefore, has been required to hire persons to perform various construction duties including building an addition onto the house. The specific amounts paid to date are unknown at the present time.

INTERROGATORY NO. 16

If any of the amounts set forth in response to the preceding paragraph were reimbursed from any source, specify the name and address of the source and the reason for the payment.

ANSWER

Upon information and belief, the plaintiff is currently receiving base pay wages from his employer; however, it does not include compensation for wage increases, bonuses, overtime, court appearances or other benefits plaintiff would receive if he was able to work.

In addition, plaintiff's medical expenses are being paid by the workers' compensation carrier, PERMA, 9 Cornell Road, Latham, New York 12110, Claim No. 216-0239681, WCB No. G134 9077.

INTERROGATORY NO. 17

If it is alleged that the laws of the State of New York were violated by the defendant, specify the same.

ANSWER

Upon information and belief, the defendant herein violated the Vehicle and Traffic Law of the State of New York and any other ordinance, rules and regulations in effect at the time and place of the occurrence. More specifically, the defendant, UNITED STATES OF AMERICA, by its agents, servants and/or employees, violated, among others, the following sections of the Vehicle and Traffic Laws: §388, §1129, §1140, §1180 and §1212.

Additionally, the plaintiffs will rely upon the proof adduced during the course of discovery, the trial of this action, and upon the charge of this court, and will rely on each and every statute, ordinance, rule, regulation and code which such demonstrates was violated by the defendant herein.

INTERROGATORY NO. 18

State the name and address of all of plaintiff Thomas Rodriguez's health insurance carriers from 2007 to the present.

ANSWER

Plaintiff objects to this Interrogatory as the information requested herein is irrelevant and lies beyond the scope of discovery. Therefore, plaintiff respectfully declines to respond to same.

INTERROGATORY NO. 19

Specify each and every act which plaintiffs contend constitutes negligence on the part of the defendant United States of America.

ANSWER

Upon information and belief, the defendant, UNITED STATES OF AMERICA, by its agents, servants, and/or employees, was negligent, careless and reckless in that the vehicle under United States Postal employee, Michael Carroll's control was operated in a negligent, careless and reckless manner, and, more particularly, such negligence, recklessness and carelessness was, among other things, exhibited:

- a. in operating the vehicle at an unreasonable rate of speed under the circumstances and conditions then and there prevailing;
- b. in operating the vehicle at a speed in excess of the lawful speed limit;
- c. in failing and omitting to keep a proper lookout;
- d. in failing and omitting to have the vehicle under control;
- e. in failing and omitting to take heed of the road and traffic conditions then and there existing;
- f. in failing and omitting to heed and obey lawfully placed traffic controls, signals, markings and signs in the vicinity of the accident;
- g. in failing and omitting to timely, reasonably and properly utilize the facilities at hand in order to avoid the accident;

h. in failing and omitting to divert the vehicle into an alternate path of travel in order to avoid the accident;

i. in operating the vehicle in disregard of the safety of the plaintiff;

j. in failing and omitting to observe the applicable rules and regulations of the road at the time and place of the occurrence;

k. in operating the vehicle in such a manner so that it unreasonably endangered the plaintiff;

l. in following the plaintiff's vehicle too closely;

m. in driving the vehicle in such a manner so that it unreasonably interfered with the free and proper use of a public highway;

n. in failing and omitting to use proper and adequate care when approaching an intersection;

o. in failing and omitting to be reasonably alert;

p. in failing and omitting to adequately, sufficiently and/or properly brake and/or stop the vehicle in a timely manner;

q. in driving, managing and operating the vehicle at an excessive, dangerous, improper and reckless rate of speed under the circumstances;

r. in operating the brakes of the vehicle in such a careless and negligent manner so as to fail to slow down and/or stop the vehicle;

s. in failing and omitting to warn of his approach;


- t. in failing and omitting to make proper use of the vehicle's brakes, lights, steering, horn and other safety devices;
- u. in failing and omitting to exercise that degree of care that a reasonable and prudent person would have used in similar circumstances;
- v. in failing and omitting to properly train its employees;
- w. in failing and omitting to avoid the incident, which in the exercise of reasonable care, could and should have been avoided.

The plaintiffs lack knowledge as to the further negligent acts or omissions of the defendant and will seek same through discovery. Upon completion of said discovery, the plaintiffs will amend and/or supplement the response to this demand, if necessary.

Pursuant to Section 388 of the Vehicle and Traffic Law of the State of New York, the defendant-owner, UNITED STATES OF AMERICA, is liable and responsible for the acts of negligence of the driver, Michael Carroll, as set forth above.

DATED: Buffalo, New York
November 9, 2017

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
GREGORY P. KRULL, ESQ.

Attorneys for Plaintiffs
Office and P.O. Address
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Buffalo, New York 14202
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TO:

MICHAEL S. CERRONE
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of New York
Attorney for Defendant
UNITED STATES OF AMERICA
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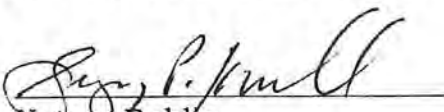
VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

THOMAS RODRIGUEZ, being duly sworn, deposes and says that she is the plaintiff in this action; that she has read the foregoing RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, she believes it to be true.


THOMAS RODRIGUEZ

Sworn to before me this
14th day of November, 2017.


Notary Public

GREGORY P. KRULL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Feb. 12, 2018

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
3 -----

4 **THOMAS RODRIGUEZ and**
5 **TINA RODRIGUEZ,**

6 Plaintiffs, Civil No. 17-CV-251

7 -vs-

8 **UNITED STATES OF AMERICA,**
9 Defendant.

10 Examination Before Trial of **THOMAS**
11 **RODRIGUEZ**, held before Brittany M. Whelan,
12 Notary Public, at 138 Delaware Avenue,
13 Buffalo, New York, on Friday, April 20th, 2018
14 at 9:00 AM, ending at 12:22 PM, pursuant to
15 notice.
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25

-----**DEPAOLO-CROSBY REPORTING SERVICES, INC.**-----

170 Franklin Street, Suite 601, Buffalo, New York 14202
716-853-5544

A P P E A R A N C E S:

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DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202
716-853-5544

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—DEPAOLO-CROSBY REPORTING SERVICES, INC.—

170 Franklin Street, Suite 601, Buffalo, New York 14202
716-853-5544

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DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202
716-853-5544

1
2 THE REPORTER: Will this be usual
3 stipulations?
4

5 The following stipulations were entered
6 into by counsel:
7

8 It is hereby stipulated by and between the
9 attorneys for the respective parties hereto
10 that the oath of the Referee is waived, and
11 that all objections, except as to the form of
12 the questions, are to be reserved until the
13 time of trial.
14

15 **T H O M A S R O D R I G U E Z**

16 413 Dansworth Road, Youngstown, New York,
17 having been first duly sworn, was examined and
18 testified as follows:
19

20
21 **EXAMINATION**

22 **BY MR. CERRONE:**

23 Q. Good morning, Mr. Rodriguez. My name is
24 Michael Cerrone. I'm an Assistant United
25 States Attorney. I have some questions for

DEPAOLO-CROSBY REPORTING SERVICES, INC.

170 Franklin Street, Suite 601, Buffalo, New York 14202
716-853-5544

1 Q. Okay. Did you suffer any injuries at your
2 pre-police employments on the job?

3 A. Not that I recall.

4 Q. Okay. Is your primary care doctor Dr. Ronald
5 Clarke?

6 A. Yes.

7 Q. And he's -- he's been your primary care for
8 some time; is that fair to say?

9 A. Yes.

10 Q. And is he still your primary care doctor?

11 A. Yes.

12 Q. Is it Clark with an E or without?

13 A. I'm not sure.

14 Q. Okay. I've seen it both ways. I'm just
15 clarifying. In interrogatory number 2 I
16 inquired whether you had been involved in any
17 automobile accidents other than the subject
18 accident of 2016 and your answer was plaintiff
19 has been involved in minor property damage
20 accidents, however cannot recall any specific
21 details; is that answer correct?

22 A. Yes.

23 Q. How many minor property damage accidents were
24 you involved in; can you recall?

25 A. An exact number, no.

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1 Q. More or less than five?

2 A. Less than.

3 Q. Were you injured in any of these accidents?

4 A. No.

5 Q. Have you ever been injured in an accident or
6 been struck -- strike that. Have you ever
7 been injured in an accident with a motor
8 vehicle or been struck by a motor vehicle?

9 MR. KRULL: Form.

10 MR. CERRONE: I'll rephrase the
11 question.

12 MR. KRULL: Do you mean struck him
13 personal body?

14 MR. CERRONE: I'll rephrase the
15 question.

16

17 BY MR. CERRONE:

18 Q. Have you ever been injured in an automobile
19 accident other than the one in 2016?

20 A. Yes.

21 Q. Okay. When was that?

22 A. I don't recall the actual date. It was years
23 and years ago.

24 Q. Okay. And what happened?

25 A. I was struck by a car riding a bike.

1 Q. And were you injured?

2 A. Just a minor bump and bruise.

3 Q. Do you consider that accident to be an
4 automobile accident?

5 A. I guess, yes.

6 Q. Okay. But in interrogatory number 2 you
7 indicated that you had not been involved in
8 any injury accidents; is that correct?

9 A. Yes. I answered I've been involved in minor
10 accidents. I don't recall the details.

11 Q. But the answer to interrogatory number 2 is
12 incorrect because in fact you had been injured
13 in an automobile accident with this incident
14 where you were struck when you were riding
15 your bike; isn't that correct?

16 MR. KRULL: Form.

17 A. I didn't suffer any lasting injury, no.

18 Q. But the question I asked in interrogatory
19 number 2 is whether you had been involved in
20 any other automobile accidents other than the
21 one that is the subject of this action,
22 correct?

23 A. That was your question, yes.

24 Q. And your answer was you were involved in only
25 minor property damage accidents; is that

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1 Q. And is that physical therapy for all of your
2 injuries or just the left shoulder?

3 A. Just the shoulder.

4 Q. And prior to the accident what -- prior to the
5 accident, did you have any pain in your left
6 shoulder at all?

7 A. Prior to?

8 Q. Prior to?

9 A. No.

10 Q. And prior to surgery, between the time of the
11 accident and the surgery in August of 2016,
12 what was your pain level on the 10 point pain
13 scale in the left shoulder?

14 A. I would say six to seven.

15 Q. And how about post-surgery, what is your pain
16 level in the left shoulder?

17 A. Four.

18 Q. As you sit here today, what is your pain level
19 -- or I should say as you're standing today --
20 as you're here today, what is the pain level
21 in your left shoulder?

22 A. Probably a four.

23 Q. And the lower back, do you have any pain in
24 your lower back before the accident?

25 A. No.

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1 Q. So what was your pain level in your lower back
2 pre-accident?

3 MR. KRULL: Pre-accident?

4 MR. CERRONE: Pre-accident.

5 A. Zero.

6 Q. Okay. And you indicated earlier that you had
7 surgery in your lumbar back. When did that
8 surgery occur?

9 A. June of '17.

10 Q. Okay. So from the time of the accident up to
11 the point of the surgery, what was your pain
12 level in your lower back?

13 A. Anywhere from a six to an eight.

14 Q. Okay. And how about post-surgery, what was
15 your pain level in the lower back?

16 A. Anywhere from six to an eight.

17 Q. And as you are here today in this deposition,
18 what is your pain level in the lower back?

19 A. Six.

20 Q. And how about the neck? Did you have any neck
21 pain prior to the accident?

22 A. No.

23 Q. So would your neck pain have been zero prior
24 to the accident?

25 A. Yes.

1 Q. Prior to the accident in 2016 were there any
2 types of activities that you had difficulty
3 doing -- again this is pre-accident. Was
4 there any type of activities, household work,
5 leisure activities that you were unable to do
6 or had difficulty doing because of your
7 physical condition?

8 A. No.

9 Q. You had no limitations prior to the accident?

10 A. None.

11 Q. And can you please tell me the activities that
12 post-accident you're unable to do or are
13 limited in doing that you used to be able to
14 do pre-accident without limitation?

15 A. I'm limited in nearly every aspect of life.

16 Q. Please continue.

17 A. I can no longer do the housework that I used
18 to do, the construction work that I used to
19 do.

20 Q. What types of housework did you used to do?

21 A. Everything around the house from polishing the
22 hardwood floors and laundry, everything,
23 dishes.

24 Q. You're unable to do the dishes now?

25 A. I can do the dishes but leaning over the sink

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1 increases the back pain so I typically don't
2 do the dishes anymore.

3 Q. Okay. What other types of housework did you
4 used to do prior to the accident?

5 A. Mow the lawn, everything, laundry, vacuuming,
6 you know, all of that stuff.

7 Q. What about the snow removal?

8 A. Snow removal. Can you imagine I forgot about
9 that in this weather?

10 Q. How did you remove the snow pre-accident,
11 snowblower or shovel?

12 A. I've always shoveled.

13 Q. Who does the snow removal now?

14 A. I hired a plow guy to come and take care of
15 it, the snow.

16 Q. You mentioned construction. What type of
17 construction activities did you do preinjury?

18 A. I built 90 percent of our last home on 100th
19 Street.

20 Q. Any other examples of construction around the
21 home?

22 A. I built our cabin from the ground up. I built
23 the shed at my last house.

24 Q. And are you able to do those activities any
25 longer?

1 A. No.

2 Q. What other types of activities are you limited
3 in doing that you used to have no limitations?

4 A. I stopped coaching my son and daughter in
5 baseball.

6 Q. And why do your injuries prohibit you from
7 coaching?

8 A. I can't swing a baseball bat. Bending over to
9 pick up balls or field balls increases the
10 pain.

11 Q. What sports do your kids play right now?

12 A. Hockey, baseball and I think that's it, hockey
13 and baseball right now.

14 Q. Is that both of them or different sports?

15 A. Both of them.

16 Q. Okay. What other types of things are you
17 unable to do? You've listed housework,
18 construction, coaching, any other examples?

19 A. I no longer golf.

20 Q. How often did you golf pre-accident?

21 A. A few times a year.

22 Q. When was the last time that you golfed?

23 A. The summer of 2015.

24 Q. Okay. Any other examples?

25 A. I don't go out as much.

1 A. Anywhere from two to three miles at a time to
2 five or six.

3 Q. Did you ever run any races?

4 A. 5K here and there.

5 Q. What's the last 5K that you ran?

6 A. The color run up here in Buffalo.

7 Q. When was that?

8 A. Maybe three years ago, four years ago.

9 Q. 2014, '15, somewhere in that time frame?

10 A. Yes.

11 Q. Can you recall any other races that you may
12 have run?

13 A. Not that I can recall.

14 Q. Okay. Any other examples of activities that
15 have become more difficult post-accident? I
16 think you've mentioned housework,
17 construction, coaching, going out to concerts
18 and sporting events, the cabin, driving,
19 walking, running. How about sleep? I think
20 you mentioned that earlier, that when you lay
21 down you feel pain in your neck and your head?

22 A. Yes.

23 Q. Did you have any difficulty sleeping at all
24 prior to the accident?

25 A. No.

1 medical supplies.

2 Q. That \$60 refers to the stretching band and the
3 ice pack that we've just discussed?

4 A. Yes.

5 Q. Okay. The left shoulder, had you ever sought
6 medical attention for any reason for treatment
7 related to your left shoulder prior to the
8 accident?

9 A. No.

10 Q. How about for the neck, had you ever sought
11 medical treatment pre-accident for the neck?

12 A. No.

13 Q. And how about for the lower back?

14 A. No.

15 Q. And then your interrogatory answers, if we
16 could turn to interrogatory number six, it's
17 on page five. The question was specify all
18 diseases, serious illnesses, inflictions or
19 injuries for which plaintiff, Thomas Rodriguez
20 had been diagnosed prior to the date of the
21 incident alleged in the complaint and answer
22 you provided was upon information and belief,
23 plaintiff had not suffered from any
24 pre-existing or subsequent injuries pertaining
25 to those parts of the body injured herein. So

1 the answer you provided there is consistent
2 with what you just provided; would that be
3 correct?

4 A. Yes.

5 Q. Okay. Have you ever been a boxer?

6 A. I have, yes.

7 Q. Okay. What period of time were you a boxer?

8 A. When I was a teenager.

9 Q. For how long did you do this?

10 A. Maybe a year or two.

11 Q. Was this when you were in high school?

12 A. Yes.

13 Q. Okay. Forgive me for not knowing the boxing
14 world too well, but were you an amateur boxer,
15 were you a professional?

16 A. No. Well, amateur, I guess, novice. I was
17 not a professional boxer, no.

18 Q. Did you train in a gym or with a certain
19 manager or trainer?

20 A. I did, yes.

21 Q. Who did you train with?

22 A. Sylvain Smith.

23 Q. Could you spell that?

24 A. S-Y-L-V-A-I-N.

25 Q. Okay. And did he have a gym?

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EXHIBIT 3

LEGAL LAST NAME MILITARY	LEGAL FIRST THOMAS	NT 0	DATE OF SERVICE 07/24/95	TIME 11:42 PM	AGE 23	CASE NUMBER 450008-029
ADDRESS 1855 ONTARIO AVE		CITY - STATE NIAGARA FALLS NY		ZIP CODE 14303	PATIENT'S PHONE 544-24	
SOCIAL SECURITY NUMBER [REDACTED]	SEX M	RACE W	MARITAL STATUS SINGLE	DATE OF BIRTH [REDACTED]	FORMER ADMIT DATE 04/04/95	TYPE EMER
BIRTH PLACE NIAGARA FALLS NY	PREVIOUS LAST NAME MILITARY	EMPLOYER SUPERMARKET LIQUORS	CHURCH AFFILIATION EPISCOPALY ELSCD			
FINANCIALLY RESPONSIBLE PERSON'S NAME THOMAS		RESPONSIBLE PERSON'S ADDRESS 1855 ONTARIO AVENUE		RESPONSIBLE PERSON'S CITY - STATE NIAGARA FALLS		
RESP. PERSON'S PHONE [REDACTED]	RELATIONSHIP TO PATIENT FATHER	RESPONSIBLE PERSON'S EMPLOYER SUPERMARKET LIQUORS	RESPONSIBLE PERSON'S EMPLOYER CITY NIAGARA FALLS	RESP. PERSON'S SS NO. [REDACTED]		
PRIMARY INSURANCE [REDACTED]	SECONDARY INSURANCE [REDACTED]					

IN CASE OF EMERGENCY, NOTIFY [REDACTED]		PHONE 544-24	ADDRESS 1855 ONTARIO AVENUE NY	RELATIONSHIP PARENT
ATTENDING PHYSICIAN Honey	PHD [REDACTED]	FMD [REDACTED]	MHC [REDACTED]	FAMILY PHYSICIAN CLARKE, RONALD, M.D.
PREV. TEST DATE 07/24/95	BROUGHT IN BY [REDACTED]	INFO. GIVEN BY SELF	MEDICAL PROFILE [REDACTED]	

COMPLAINT (DATE & TIME) PT STATES HAS PAIN LOWER BACK	CLERK'S NOTATION [REDACTED]
--	--------------------------------

NIAGARA FALLS MEMORIAL MEDICAL CENTER EMERGENCY SERVICE RECORD PHYSICIANS NOTES

TIME	ORDERS	EXAM TIME
	CONDITION ON ADMISSION <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR	
	23 y.o. W ^o who while riding bicycle was struck by an automobile on the side, landed on hood of car @ head trauma. c/o back (lower) pain	
	LS-spine Urine dipstick (Ileal) bldg m @ blood	WNL, W ^o in NAD HEENT - @ lesions neck - @ supple, @ tenderness back - @ tenderness over lumbar area @ spasms, leg raises w/ ext - @ lesions, @
	Plan: ice x 24 hrs Bedrest x 2 days Advil 600-800 mg qid prn pain off work x 2 days	

CONDITION ON DISCHARGE <input type="checkbox"/> ADMIT <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> EXPIRED	IMPRESSION: Lumbar strain
Admitting Doctor: Time: AM PM Floor: Room:	Signed: [Signature] MD Address:

GOVERNMENT EXHIBIT
8
450018 AD

00001231

EXHIBIT 4

8/1/95 194

102

168


while riding Bike
hit by car 7/24/95
continues to c/b lower back pain
when lifts something sharp
pain neck.

in my neck

mostly size middle of thigh

in L5

re c spine

Q  Q40


L3/4

Q5 in Q40

Q5E

on L5

CS

Q  come 4 in. by
Xy neck

GOVERNMENT
EXHIBIT

10
4/20/18

00001224

EXHIBIT 5

9/19/99 wt 210#

BP 120/80

meds
Ø

cc: lower back pain

SUB: % lower back pain

HPI: Pt states that his lower back has been hurting him for past week to 2 weeks. The pain is described as a dull ache feeling and doesn't really limit his activities much. Denies use of Motrin, ice/heat or lumbar belt. Denies any associated manifestations including numbness or tingling in lower extremities. He is mostly concerned because he might be taking on a new job which requires additional strenuous activities.

ABJ: 27 yowm presents in no acute distress.

Musculoskeletal - Spine inline & obvious deformities. Ø tenderness on palpation on c straight leg raises. Flexibility slightly decreased.

Neuro - DTR intact in LE (2+) Bilaterally

Derm - wart on index finger of @ hand almost completely resolved.

Assessment - lumbar back pain, common wart.

Plan - use of Motrin 400 mg po q 6° PRN PTC and before work. @ flexibility and abd muscle tone, use of ice/heat PRN for 20 minutes on and off, and use of lumbar belt.

Teaching - indications, use and SE of Motrin. Effects of @ flexibility and muscle tone and lumbar belt for additional support.

Samuel D. FNP STUDENT
Agree above - J Austin - KERN RNCS FNP

12-17-99

see phone mes

gjc

GOVERNMENT
EXHIBIT

12
4/20/18

EXHIBIT 6

CHIROPRACTIC REGISTRATION AND HISTORY

1 PATIENT INFORMATION

Date 3/16/10
 Patient THOMAS RODRIGUEZ
 Address 1709 100TH ST
 City, State, zip NE NY 14304
 Sex: ☒ M ☐ F Age 38 Birth date [REDACTED]
☐ Single ☒ Married ☐ Widowed ☐ Separated ☐ Divorced
 Patient SS# [REDACTED]
 Occupation POLICE OFFICER
 Employer CITY OF NIAGARA FALLS
 Employer Address 1925 MAIN ST
 Employer Phone 286-4549
 Spouse's Name TINA RODRIGUEZ
 Birthdate 6-1-78 SS# [REDACTED]
 Occupation TEACHER
 Spouse's Employer LEW-PORT
 Whom may we thank for referring you?
 Height 6 Weight 230

2 INSURANCE

Who is responsible for this account? [REDACTED]
 Relationship to Patient [REDACTED]
 Insurance Co. [REDACTED]
 Group # [REDACTED]
 Is patient covered by additional insurance? ☐ Yes ☒ No
 Subscriber's Name [REDACTED]
 Birth date [REDACTED] SS# [REDACTED]
 Relationship to Patient [REDACTED]
 Insurance Co. [REDACTED]
 Group # [REDACTED]
Assignment AND RELEASE
 I, the undersigned, certify that I (or my dependent) have insurance coverage with [REDACTED] and assign directly to Dr. [REDACTED] all insurance benefits, if any, otherwise payable to me for services rendered. I understand that I am financially responsible for all charges whether or not paid by insurance. I hereby authorize the doctor to release all information necessary to secure the payment of benefits. I authorize the use of this signature on all insurance submissions.
 Responsible Party Signature [REDACTED]
 Relationship [REDACTED] Date [REDACTED]

3 PHONE NUMBERS

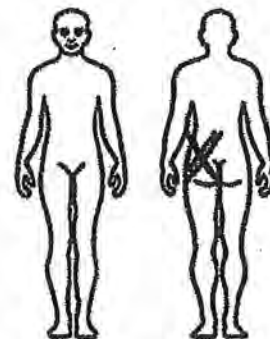
Home 572-1062 Work 609-2280 Ext. [REDACTED]
 Best time and place to reach you Any
IN CASE OF EMERGENCY, CONTACT
 Name TINA RODRIGUEZ Relationship WIFE
 Home Phone 510 5953 Work Phone [REDACTED]

4 ACCIDENT INFORMATION

Is condition due to an accident? ☐ Yes ☒ No Date [REDACTED]
 Type of accident ☐ Auto ☐ Work ☒ Home ☐ Other
 To whom have you made a report of your accident?
☐ Auto Insurance ☐ Employer ☐ Worker Comp. ☐ Other
 Attorney Name (if applicable) [REDACTED]

5 PATIENT CONDITION

Reason for visit LOWER BACK PAIN
 When did your symptoms appear? 3 DAYS AGO
 Is this condition getting progressively worse? ☒ Yes ☐ No ☐ Unknown
 Mark an X on the picture where you continue to have pain, numbness, or tingling. 8
 Rate the severity of your pain on a scale from 1 (least pain) to 10 (severe pain) 8
 Type of pain ☒ Sharp ☐ Dull ☐ Throbbing ☒ Numbness ☐ Aching ☐ Shooting
☐ Burning ☒ Tingling ☐ Cramps ☐ Stiffness ☐ Swelling ☐ Other
 How often do you have this pain? Constant
 Is it constant or does it come and go? [REDACTED]
 Does it interfere with your ☒ Work ☐ Sleep ☐ Daily Routine ☐ Recreation
 Activities or movements that are painful to perform ☒ Sitting ☐ Standing ☐ Walking ☒ Bending ☐ Lying Down



GOVERNMENT
EXHIBIT

19
4/20/18 (24)

6 HEALTH HISTORY

Physician's Name _____

What treatment have you already received for your condition? ☐ Medications ☐ Surgery ☐ Physical Therapy

☐ Chiropractic Services ☒ None ☐ Other _____

Name and address of other doctor(s) who have treated you for your condition _____

Date of Last: Spinal X-Ray _____ Chest X-Ray 2006 MRI, CT-Scan _____

Place a mark on "Yes" or "No" to indicate if you have had any of the following:

AIDS/HIV	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Emphysema	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Miscarriage	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Rheumatic	
Alcoholism	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Epilepsy	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Mononucleosis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Fever	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Allergy Shots	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Fractures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Multiple		Scarlet Fever	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Anemia	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Glaucoma	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Sclerosis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Stroke	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Anorexia	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Golter	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Mumps	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Thyroid	
Appendicitis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Gonorrhea	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Osteoporosis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Problems	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Arthritis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Gout	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Pacemaker	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Tonsillitis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Asthma	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Heart Disease	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Parkinson's		Tuberculosis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Bleeding		Hepatitis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Disease	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Tumors,	
Disorders	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Hernia	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Pinched Nerve	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Growths	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Breast Lump	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Herniated Disk	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Pneumonia	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Ulcers	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Bronchitis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Herpes	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Polio	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Venereal	
Bulimia	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	High		Prostate		Disease	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Cancer	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Cholesterol	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Problem	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Whooping	
Cataracts	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Hypertension	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Prosthesis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Cough	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Chemical		Kidney Disease	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Psychiatric		Other	
Dependency	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Liver Disease	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Care	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Chicken Pox	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Measles	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Rheumatoid			
Diabetes	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Migraine		Arthritis	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
		Headache	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

EXERCISE

- ☐ None
☒ Moderate
☐ Daily
☐ Heavy

WORK HABITS

- ☐ Sitting
☐ Standing
☒ Light Labor
☐ Heavy Labor

HABITS

- ☐ Smoking
☐ Alcohol
☐ Coffee/Caffeine Drinks
☐ High Stress Level

Packs/Day _____
 Drinks/Week _____
 Cups/Day _____
 Reason _____

Are you pregnant? ☐ Yes ☒ No Due Date _____

Injuries/Surgeries you have had	Description	Date
Falls		
Head Injuries		
Broken Bones	<u>Broken Right Hand</u>	<u>1987</u>
Dislocations		
Surgeries		
Other		

7 MEDICATIONS

ALLERGIES

VITAMINS/HERBS/MINERALS

<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Pharmacy Name _____	_____	_____
Pharmacy Phone _____	_____	_____

EXHIBIT 7

ABOUT THE PATIENT

Advance Chiropractic
820 Main Street Niagara Falls, NY 14301

Name THOMAS RODRIGUEZ Today's Date 8/5/13 Birthdate [REDACTED] Age 41
Address 1538 100TH ST City NF State NY Zip 14304
Home Phone _____ Cell Phone 572-1062 Work Phone 286-4595 Gender ☒ M ☐ F
Significant Other's Name Tina Rodriguez Who referred you? Wife
Your Employer CITY OF NIAGARA FALLS Type of Work POLICE OFFICER
e-Mail Address _____ Have you been to a chiropractor before? ☐ No ☒ Yes
Emergency Contact Tina Rodriguez ph # 510-5953
Name of Medical Doctor(s) RONALD CLARK

- I authorize the doctor or his staff to render care as deemed appropriate for me and / or my child.
- I authorize Advance Chiropractic to release and / or request records to or from other providers as may be necessary.
- I understand I am responsible for all bills incurred in this office.
- I authorize assignment of my insurance benefits (if applicable) directly to the provider.
- Person responsible for this account if other than the patient? Tina Rodriguez
- I understand that after any initial promotional services all care is rendered at usual and customary fees.
- For my balance my preferred payment method is: ☒ Cash ☐ Check ☐ Credit Card ☐ Car/Work Ins.

REASON FOR SEEKING CARE

PLEASE LIST YOUR COMPLAINTS

1. LOW BACK PAIN (R) How long has this been an issue? 3 WEEKS
Is it: ☒ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to _____
2. _____ How long has this been an issue? _____
Is it: ☐ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to _____
3. _____ How long has this been an issue? _____
Is it: ☐ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to _____
4. _____ How long has this been an issue? _____
Is it: ☐ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to _____

5. Does your condition effect: ☐ Sleep ☐ Work ☒ Daily Routine ☐ Sitting ☐ Driving

6. What makes it better? MOVEMENT

7. What makes it worse? _____

8. What Doctor's have you seen for this? NONE

9. Type of treatment: _____

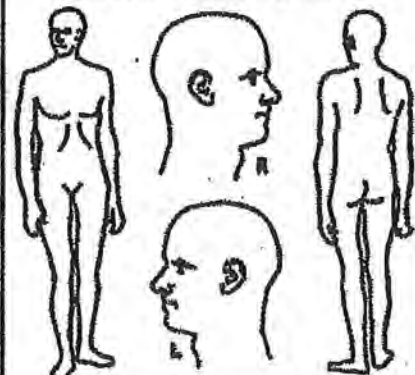
10. Results: _____

NOTES: _____

Are you pregnant?

☐ Yes ☐ No

Please mark All areas of concern.



GOVERNMENT
EXHIBIT

4/20/18 (BA)

GENERAL HEALTH HISTORY

Advance Chiropractic
820 Main Street Niagara Falls, NY 14301

Patient Name Thomas Rorieux Mark the conditions that apply to you.

Past	Present	Past	Present
<input type="checkbox"/>	<input type="checkbox"/> Headaches	<input type="checkbox"/>	<input type="checkbox"/> Urinary Problems
<input type="checkbox"/>	<input type="checkbox"/> Migraines	<input type="checkbox"/>	<input type="checkbox"/> Easy Bruising
<input type="checkbox"/>	<input type="checkbox"/> Shortness of Breath	<input type="checkbox"/>	<input type="checkbox"/> Tobacco Use
<input type="checkbox"/>	<input type="checkbox"/> Allergies / Asthma	<input type="checkbox"/>	<input type="checkbox"/> Dental Problems
<input type="checkbox"/>	<input type="checkbox"/> Medication Side Effects	<input type="checkbox"/>	<input type="checkbox"/> Fibromyalgia
<input type="checkbox"/>	<input type="checkbox"/> Diabetes	<input type="checkbox"/>	<input type="checkbox"/> Blood Thinner use
<input type="checkbox"/>	<input type="checkbox"/> Hands or Feet cold	<input type="checkbox"/>	<input type="checkbox"/> HIV Positive
<input type="checkbox"/>	<input type="checkbox"/> Muscle aches	<input type="checkbox"/>	<input type="checkbox"/> Cancer
<input type="checkbox"/>	<input type="checkbox"/> Trouble Walking	<input type="checkbox"/>	<input type="checkbox"/> Depression
<input type="checkbox"/>	<input type="checkbox"/> Leg / Foot Numbness	<input type="checkbox"/>	<input type="checkbox"/> Alcohol Use
<input type="checkbox"/>	<input type="checkbox"/> Fainting	<input type="checkbox"/>	<input type="checkbox"/> ___ High or ___ Low Blood Pressure
<input type="checkbox"/>	<input type="checkbox"/> Gall Bladder Trouble	<input type="checkbox"/>	<input type="checkbox"/> Stroke History
<input type="checkbox"/>	<input type="checkbox"/> Ringing in Ears	<input type="checkbox"/>	<input type="checkbox"/> High Cholesterol
<input type="checkbox"/>	<input type="checkbox"/> Ear Problems	<input type="checkbox"/>	<input type="checkbox"/> TMJ
<input type="checkbox"/>	<input type="checkbox"/> Sleeping Problems	<input type="checkbox"/>	<input type="checkbox"/> Digestive Problems
<input type="checkbox"/>	<input type="checkbox"/> Vision Problems	<input type="checkbox"/>	<input type="checkbox"/> Pain all Over
<input type="checkbox"/>	<input type="checkbox"/> Thyroid Problems	<input type="checkbox"/>	<input type="checkbox"/> Tension / Irritability
<input type="checkbox"/>	<input type="checkbox"/> Liver Disease	<input type="checkbox"/>	<input type="checkbox"/> Chest Pains
<input type="checkbox"/>	<input type="checkbox"/> Kidney Problems	<input type="checkbox"/>	<input type="checkbox"/> Heart Pacemaker
<input type="checkbox"/>	<input type="checkbox"/> Light Bothers Eyes	<input type="checkbox"/>	<input type="checkbox"/> Heart Problems
<input type="checkbox"/>	<input type="checkbox"/> Other _____		

- List any medications are you taking: None
- Please list all doctors you are currently seeing: None
- Has any Doctor or other professional advised you to "Go to a Chiropractor": ☒ No ☐ Yes, Name _____
- Have you had any X-Rays/MRIs/CT Scans? No Which Facility? _____

PAST HISTORY

- List any past auto collisions: None Was any care received? _____
- List any past work injuries: Right SHOULDER Was any care received? Surgery
- List any past sport, recreational, or home injuries _____
- Please describe any past conditions and treatment received: _____
- Please list any past hospitalizations and surgeries: Shoulder Surgery 2011 Hand Surgery 1997

FAMILY HISTORY

- Father's side: ☐ Heart Disease ☐ Cancer ☐ Diabetes ☐ Heavy Medication use ☐ Arthritis ☐ Other _____
- Mother's side: ☐ Heart Disease ☐ Cancer ☐ Diabetes ☐ Heavy Medication use ☐ Arthritis ☐ Other _____
- Is there any other family history you want us to know? NO

EXHIBIT 8

ABOUT THE PATIENT

Advance Chiropractic
820 Main Street Niagara Falls, NY 14301

Name THOMAS RODRIGUEZ Today's Date 10/8/15 Birthdate [REDACTED] Age 43
Address 1538 100th St City N.F State NY Zip 14304
Home Phone --- Cell Phone 512-1062 Work Phone 286-4734 Gender DM ☐ F
Significant Other's Name Tina Rodriguez Who referred you? Tina
Your Employer NFDD Type of Work Police Officer
e-Mail Address --- Have you been to a chiropractor before? ☐ No ☐ Yes
Emergency Contact 510 Tina Rodriguez ph # 510-5953
Name of Medical Doctor(s) DR CLARK

- I authorize the doctor or his staff to render care as deemed appropriate for me and / or my child.
- I authorize Advance Chiropractic to release and / or request records to or from other providers as may be necessary.
- I understand I am responsible for all bills incurred in this office.
- I authorize assignment of my insurance benefits (if applicable) directly to the provider.
- Person responsible for this account if other than the patient? ---
- I understand that after any initial promotional services all care is rendered at usual and customary fees.
- For my balance my preferred payment method is: ☐ Cash ☐ Check ☐ Credit Card ☐ Car/Work Ins.

X
Patient Signature (This represents a long term authorization for all occasions of service)

Y 10/8/15
Date

REASON FOR SEEKING CARE

PLEASE LIST YOUR COMPLAINTS

1. Lower Back How long has this been an issue? 2 weeks
Is it: ☒ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to ---
2. Upper Back How long has this been an issue? 2 weeks
Is it: ☒ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to ---
3. --- How long has this been an issue? ---
Is it: ☐ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to ---
4. --- How long has this been an issue? ---
Is it: ☐ Dull ☐ Sharp ☐ Ache ☐ Numb / Tingle ☐ Stabbing ☐ Constant ☐ Occasional ☐ Staying the same ☐ Getting worse
☐ Mild ☐ Moderate ☐ Severe ☐ Worse in the morning ☐ Worse in evening ☐ Pain radiates to ---

5. Does your condition affect: ☐ Sleep ☐ Work ☐ Daily Routine ☒ Sitting ☒ Driving

6. What makes it better? stretching

7. What makes it worse? Not Sure

8. What Doctor's have you seen for this? None

9. Type of treatment: ---

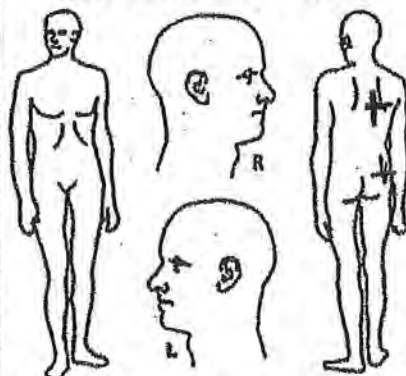
10. Results: ---

NOTES: ---

Are you pregnant?

☐ Yes ☒ No

Please mark All areas of concern.



GOVERNMENT
EXHIBIT

21
4/20/18

GENERAL HEALTH HISTORY

Advance Chiropractic
820 Main Street Niagara Falls, NY 14301

Patient Name Thomas Lopez

Mark the conditions that apply to you.

Past Present

- ☐ ☐ Headaches
- ☐ ☐ Migraines
- ☐ ☐ Shortness of Breath
- ☐ ☐ Allergies / Asthma
- ☐ ☐ Medication Side Effects
- ☐ ☐ Diabetes
- ☐ ☐ Hands or Feet cold
- ☐ ☐ Muscle aches
- ☐ ☐ Trouble Walking
- ☐ ☐ Leg / Foot Numbness
- ☐ ☐ Fainting
- ☐ ☐ Gall Bladder Trouble
- ☐ ☐ Ringing in Ears
- ☐ ☐ Ear Problems
- ☐ ☐ Sleeping Problems
- ☐ ☐ Vision Problems
- ☐ ☐ Thyroid Problems
- ☐ ☐ Liver Disease
- ☐ ☐ Kidney Problems
- ☐ ☐ Light Bothers Eyes
- ☐ ☐ Other _____

Past Present

- ☐ ☐ Urinary Problems
- ☐ ☐ Easy Bruising
- ☒ ☐ Tobacco Use
- ☐ ☐ Dental Problems
- ☐ ☐ Fibromyalgia
- ☐ ☐ Blood Thinner use
- ☐ ☐ HIV Positive
- ☐ ☐ Cancer
- ☐ ☐ Depression
- ☐ ☐ Alcohol Use
- ☐ ☐ ___ High or ___ Low Blood Pressure
- ☐ ☐ Stroke History
- ☐ ☐ High Cholesterol
- ☐ ☐ TMJ
- ☐ ☐ Digestive Problems
- ☐ ☐ Pain all Over
- ☐ ☐ Tension / Irritability
- ☐ ☐ Chest Pains
- ☐ ☐ Heart Pacemaker
- ☐ ☐ Heart Problems

1. List any medications are you taking: N/A
2. Please list all doctors you are currently seeing: N/A
3. Has any Doctor or other professional advised you to "Go to a Chiropractor"? ☒ No ☐ Yes, Name _____
4. Have you had any X-Rays/MRIs/CT Scans? _____ Which Facility? _____

PAST HISTORY

4. List any past auto collisions: _____ Was any care received? _____
5. List any past work injuries: Ruptured shoulder Was any care received? Surgery
6. List any past sport, recreational, or home injuries _____
7. Please describe any past conditions and treatment received: _____
8. Please list any past hospitalizations and surgeries: _____

FAMILY HISTORY

- Father's side: ☐ Heart Disease ☐ Cancer ☐ Diabetes ☐ Heavy Medication use ☐ Arthritis ☐ Other _____
- Mother's side: ☐ Heart Disease ☐ Cancer ☐ Diabetes ☐ Heavy Medication use ☐ Arthritis ☐ Other _____
- Is there any other family history you want us to know? No

EXHIBIT 8A













EXHIBIT 9

STATE OF NEW YORK
COUNTY COURT: COUNTY OF NIAGARA

THE PEOPLE OF THE STATE OF NEW YORK

vs.

ORDER


SHATEEK L. PAYNE,

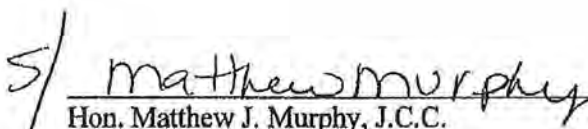
Defendant,

Ind. No. 2013-394

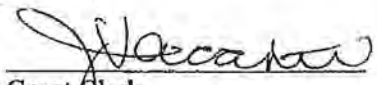
The defendants, having moved the Court pursuant to CPL 710.20 to suppress all evidence seized by the Niagara Falls Police Department, and the Court having conducted a hearing and having issued an oral decision in open court on March 21, 2014,

Now, on motion of the defendants, it is hereby

ORDERED, that all evidence seized by the Niagara Falls Police department in the above-captioned proceeding is suppressed for the reasons set forth by the Court in its oral decision on March 21, 2014.


Hon. Matthew J. Murphy, J.C.C.

GRANTED: April 2, 2014


Court Clerk

COPY- ORDER- EVIDENCE SEIZED SUPPRESSED/MURPHY



24120-1

05/07/2014 10:12:51 AM

1 Pages

Wayne F. Jagow, Niagara County Clerk

Clerk: TM

EXHIBIT 10

NIAGARA COUNTY COURT
NIAGARA COUNTY COURTHOUSE
LOCKPORT, NY 14094-2758

ORDER TO SEAL
160.50 CPL

The People of the State of New York

Indictment #: 2013-394-2

VS.

NYSID #: 07451141R

SHATEEK L. PAYNE
986 FILLMORE AVE.
BUFFALO, NY 14211

Date: April 26, 2018

Hon. MATTHEW J. MURPHY

Date of Birth: 05-02-1977

Date of Arrest: 05-09-2013

Charges: PL-221.25 -DF-
VTL-1172.A-0A -I -

To the Commissioner of the Division of Criminal Justice Services
To the Commissioner of the Department of Correction
To the District Attorney of the County of Niagara
To the Sheriff of the County of Niagara
To the Police Superintendent of the City of Niagara Falls
To the Clerk of the City Court of Niagara Falls

The above captioned criminal proceedings having on March 21, 2014
been terminated in favor of the above named defendant in accordance with
subdivision 2 of Section 160.50 of the Criminal Procedure Law, it is,

ORDERED

That the provisions of Section 160.50 of the Criminal Procedure Law
be complied with, All transcripts are sealed.

A true extract from the minutes.

Attorney of Record:

[Signature]
Court Clerk
Niagara County Court

ORDER TO SEAL-TRANSCRIPTS



24120-1

04/26/2018 12:37:00 PM

1 Pages

Joseph A. Jasirzowski, Niagara County Clerk

Clerk: LMH

EXHIBIT 11

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS RODRIGUEZ
TINA RODRIGUEZ,

Plaintiff,

17-CV-251

v.

UNITED STATES OF AMERICA

Defendant.

DEFENDANT'S REQUESTS FOR ADMISSION TO PLAINTIFF

Pursuant to Fed.R.Civ.P. 36, defendant demands that plaintiff answer the following requests for admission within 30 days after service of this request.

REQUESTS FOR ADMISSION

1. Plaintiff Thomas Rodriguez ("Rodriguez") testified on behalf of the People in a suppression hearing in the case of People v. Sylvester on or about March 21, 2014.
2. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy issued an Order suppressing all evidence seized by the Niagara Falls Police Department.
3. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy ruled that Rodriguez's testimony was patently tailored to avoid constitutional objections.
4. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy ruled that Rodriguez "tailored his testimony to justify the subsequent search."

5. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy ruled that he did not find Rodriguez credible on certain key aspects of his testimony.

6. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy ruled that he did not believe that Rodriguez ever asked for consent to search the subject vehicle.

7. After the conclusion of the suppression hearing in People v. Sylvester, Judge Matthew Murphy found that Rodriguez's testimony under oath at the suppression hearing was not truthful.

8. In People v. Sylvester, the New York State Appellate Division, Fourth Department, on June 19, 2015, affirmed Judge Murphy's order suppressing the evidence seized by the Niagara Falls Police Department.

9. In People v. Sylvester, the Fourth Department, on June 19, 2015, affirmed Judge Murphy's order because that order "was premised upon the testimony of a police witness that the court did not find truthful."

10. In People v. Sylvester, the Fourth Department, on June 19, 2015, held that Judge Murphy's "credibility determination is supported by the record, and we see no basis to disturb it."

DATED: Buffalo, New York, May 16, 2018.

JAMES P. KENNEDY, JR.
United States Attorney

A large, stylized handwritten signature in black ink, likely belonging to James P. Kennedy, Jr., positioned above the typed name and title.

BY: MICHAEL S. CERRONE
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716-843-5851
Michael.Cerrone@usdoj.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS RODRIGUEZ
TINA RODRIGUEZ,

Plaintiff,

17-CV-251

v.


UNITED STATES OF AMERICA

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2018, I have mailed the foregoing **DEFENDANT'S REQUESTS FOR ADMISSION**, by the United States Postal Service to:

Gregory P. Krull, Esq.
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202



Diane Carlsen

EXHIBIT 12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS RODRIGUEZ
TINA RODRIGUEZ,

Plaintiff,

17-CV-251

v.

UNITED STATES OF AMERICA

Defendant.

DEFENDANT'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Fed.R.Civ.P. 34, defendant demands that plaintiff produce the following documents and/or things at the United States Attorney's Office, 138 Delaware Avenue, Buffalo, New York 14202 within 30 days after service of this request.

DEFINITIONS AND INSTRUCTIONS

These document demands incorporate by reference the definitions and rules of construction set forth in Rule 26 of the Local Rules of Civil Procedure for the Western District of New York.

DOCUMENT DEMANDS

1. Copies of all documents, including transcripts and court orders, concerning any adverse credibility findings made with respect to any testimony provided by plaintiff Thomas Rodriguez in any matter in which he testified in the past including, but not limited to, the cases of People v. Sylvester, People v. Cox, and People v. Paonessa and Taormina.

2. Copies of all documents received from the Niagara Falls Police Department regarding any adverse credibility findings made with respect to any testimony provided by

plaintiff Thomas Rodriguez in any matter in which he testified in the past including, but not limited to, the cases of People v. Sylvester et al., People v. Cox, and People v. Paonessa and Taormina.

DATED: Buffalo, New York, May 16, 2018.

JAMES P. KENNEDY, JR.
United States Attorney



BY: MICHAEL S. CERRONE
Assistant U.S. Attorney
U.S. Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716-843-5851
Michael.Cerrone@usdoj.gov

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS RODRIGUEZ
TINA RODRIGUEZ,

Plaintiff,

17-CV-251

v.

UNITED STATES OF AMERICA


Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2018, I have mailed the foregoing **DEFENDANT'S
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**, by the United States

Postal Service to:

Gregory P. Krull, Esq.
Lipsitz Green Scime Cambria LLP
42 Delaware Avenue, Suite 120
Buffalo, NY 14202


Diane Carlsen